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**From:** LaCount, Melanie [LaCount.Melanie@epa.gov]  
**Sent:** 7/8/2020 2:36:26 PM  
**To:** Lifland, David [Lifland.David@epa.gov]  
**Subject:** RE: more trade press on TX SO2 final action

Thanks, David!

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**From:** Lifland, David  
**Sent:** Tuesday, July 7, 2020 8:33 PM  
**To:** Harvey, Reid <Harvey.Reid@epa.gov>; Haeuber, Richard <Haeuber.Richard@epa.gov>; LaCount, Melanie <LaCount.Melanie@epa.gov>  
**Cc:** Murray, Beth <Murray.Beth@epa.gov>  
**Subject:** more trade press on TX SO2 final action

From InsideEPA:

EPA-Approved Texas SO2 Trading Plan May Face Further Legal Challenges  
July 7, 2020

EPA has approved Texas' sulfur dioxide (SO2) trading program as an alternative to source-specific emissions controls to implement the agency's regional haze reduction program, but environmentalists are already harshly criticizing the long-disputed measure because it "dismally" fails to cut pollution, adding they are open to further legal action.

A final rule signed June 29 by EPA Administrator Andrew Wheeler affirms, with certain modifications, an earlier rule that provisionally approved the trading program as an alternative to source-specific controls.

The haze program requires that large emissions sources -- here, coal-fired power plants -- install best available retrofit technology (BART) to curb their haze-forming pollution. States can opt for alternative measures if EPA determines these are "better than BART." The program aims to restore visibility to natural conditions in "Class I" national parks and wilderness areas.

But environmentalists are decrying the final SO2 program as "dismally" inadequate to protect visibility and public health, suggesting they might continue years-old litigation to force tougher emissions controls on individual plants.

In a June 30 status report in the U.S. District Court for the District of Columbia lawsuit National Parks Conservation Association (NPCA), et al. v. EPA, et al., a suit long held in abeyance pending final agency action on the haze plan, EPA includes a copy of its final rule, which has not yet been published in the Federal Register.

The complex rule affirms EPA's earlier finding that the SO2 trading program, developed by Texas regulators and EPA, is an acceptable alternative to BART. It further confirms that Texas has satisfied its "good neighbor" requirements with respect to visibility issues under the Clean Air Act, and must take no further action to curb emissions that affect downwind states. The rule finds Texas sources have no visibility-related obligations with respect to particulate matter.

The rule confirms and finalizes a federal implementation plan (FIP) for Clean Air Act compliance, dating from October 2017. In August 2018, EPA proposed to "affirm" that FIP, and also issued a November 2019 supplemental proposal addressing certain perceived shortcomings in the program.

As such, the new final rule imposes certain new features, as proposed, to ensure that the SO2 trading program meets its objectives and does not result in more pollution than intended.

These features include an overarching statewide “assurance level” of 255,083 tons of SO<sub>2</sub>, and related changes to a supplemental allowance pool in the state. Also, EPA will terminate an “opt-in” mechanism for power plants, in order to address concerns that it would have rendered the trading program less stringent than EPA’s interstate Cross-State Air Pollution Rule (CSAPR) utility emissions trading program.

EPA originally based its findings that a trading system was “better than BART” on the Lone Star State’s participation in CSAPR, but it had to revise its approach after court rulings modifying the CSAPR program.

“To address concerns that the opt-in provisions weakened the functional equivalence of the Texas SO<sub>2</sub> Trading Program to CSAPR and to be consistent with EPA’s determination not to include opt-in provisions in the CSAPR trading programs on the basis that opt-in provisions would undermine achievement of the CSAPR program’s emission reduction objectives, we are taking final action to terminate the opt-in provisions in the Texas SO<sub>2</sub> Trading Program,” EPA says.

#### ‘Unacceptable’ Program

But environmentalists are not impressed by the final Texas trading program. “Texas coal plants emit the most visibility-impairing, lung-damaging sulfur dioxide pollution in the nation. Powering our homes can be done in a way that does not jeopardize the public’s health and the future of our public lands. This final rule falls dismally short in doing this,” said NPCA attorney Stephanie Kodish in a June 29 statement.

“It’s unacceptable that the agency charged with protecting public health and our environment continues to go to great lengths to weaken our nation’s clean air laws in favor of industry when technology for clean power is readily available. EPA’s actions fly in the face of law, fact and reason and NPCA will not rest until our communities and parks have the clean air they need and deserve,” Kodish added, indicating that litigation may continue.

Once published in the Register, environmentalists would have 60 days to challenge the haze rule in federal appeals court. Environmentalists could file a fresh suit or opt to continue the existing lawsuits. Another existing legal action over the Texas haze program is still in abeyance in the U.S. Court of Appeals for the 5th Circuit, in NPCA, et al., v. EPA, et al. -- Stuart Parker ([sparker@iwpnews.com](mailto:sparker@iwpnews.com))

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